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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the matter of) CC Docket Nos. 95-20 & 98-10
Computer III Further Remand)
Proceedings: Bell Operating)
Company Provision of Enhanced) COMMENTS OF
Services & 1998 Biennial) COMMUNITY INTERNET SYSTEMS, INC.
Regulatory Review of Computer III and)
ONA Safeguards and Requirements)

This is in response to the request for comments on the Commission's Further Notice of Proposed Rulemaking.

Our company is a small ISP that serves 2,000 homes and businesses all across Nebraska. We also serve as the Internet Administrator for the Nebraska Cooperative Government which is an interlocal organization consisting of over 70 Nebraska Cities, Counties, and Villages with a population of over 100,000. Our pioneering communications were recognized in 1995 as the outstanding public telecommunications success story for Nebraska at the Docking Institute's Tri-State (Colorado, Kansas, & Nebraska) Governors' Conference.

We were one of the first entities to provide Internet Service to rural Nebraska. As part of our operations, we provide free Internet service to the libraries in the communities we serve and to several schools along with free business homepages to many Nebraska businesses. We also serve a number of rural hospitals with Internet Service.

It is from our unique rural Nebraska perspective that we make our response to the Notice of Proposed Rule Making. With the exception of Lincoln and Omaha, Nebraska has a sparse population spread over 75,000 square miles with no urban areas in excess of 50,000. The phone service is provided by approximately 30 smaller phone companies (*many of which are artifacts of the early days of telephone*), U.S. West (*the BOC operating in Nebraska*) and GTE. The State Legislature is heavily lobbied by the phone companies and there are rarely non-phone company players before the Public Service Commission. Virtually all the legal practitioners in the state with background in telecommunications are retained by phone companies. The electric utilities are provided by Public Power Districts and municipally owned power utilities (*Nebraska is the only state that is 100% publicly owned electric power*). These power companies have expertise in installing fiber and copper and maintain an extensive system of telecommunications for their own internal purposes. Repeated efforts have been made by the municipal leaders and power companies to seek to develop a cooperative effort that would harness incumbent providers' resources, the resources of the power companies, and private venture capital. GTE has been unresponsive and the local BOC has flatly rebuked them, openly stating that its solution to obtaining resources enhanced communication in Nebraska is to argue for bigger subsidies for the BOC from the Universal Service Fund. The BOC unequivocally refuses to consider a cooperative approach. That means the power companies are the rock upon which any meaningful alternative to existing monopoly would be built in this state. Under current conditions, it is unlikely that other competing major phone or

cable entities will put much effort to competing with incumbent providers in these sparsely populated areas. If in Nebraska there is to be any hope of the vibrant market the 1996 Act envisions within the reasonable future, it would likely have to come from a partnership between the power districts, local private capital (*There is relatively significant local private capital interested in investing in improving the telephone, cable, and Internet infrastructure*), and some of small area phone companies who are smart enough to realize the benefits of cooperation. Realizing this, powerful incumbent providers have launched what amounts to a three prong maneuver to maintain their status quo monopoly.

First, they have taken aggressive steps to head off any market entry by the power companies. In spite of the plain language of the 1996 Act removing barriers to competition, the incumbents have successfully argued in state forums, that the public and municipal power companies may not engage in telecommunications because their organic legislation and documents do not affirmatively authorize them to do so. If this position is allowed to prevail, it means that a major source of telecommunications competition in other states will be precluded from emerging in Nebraska.

Second, to deter the investment of non-phone company capital, incumbent providers have utilized their monopoly position to prevent access to infrastructure, increase the organizational and management costs, and heighten risks. The incumbents, for example, recently withdrew all tariffs for dry pair thus preventing any competing non-CLEC's providers from utilizing "dry pair" to provide data transmissions. They have misquoted service charges. The local BOC has quoted line charges at one rate and then billed much higher rate after the ISP relied on the quotation in establishing a market. (*In the case of one T-1 circuit the difference between what was quoted and what was billed was approximately \$1,000 / month.*) The BOC refuses to cancel circuits that have been ordered cancelled and continues to bill for them. It has caused co-carriers to bill for circuits that should have been cancelled. The BOC has reorganized internally to give premiere treatment to businesses and government seeking to use its high capacity services while shunting off ISP's to a special group. It refuses to answer calls and correspondence regarding billing and administrative matters. This acts to add additional legal and management overhead to entities seeking to compete even on an elementary level. It virtually assures that the incumbents existing market will remain for them when years hence they are ready to turn their attention to it. Further, there have been pitiful few CLEC applications before the Nebraska Public Service Commission. Those that have been filed have been met with the expected, expensive, and extensive resistance from incumbents.

Third, while thwarting the efforts to utilize local resources, they proclaim that the market can not support their investment and, to develop it at all, they need massive amounts of Universal Service Fund money. Money that, in our opinion, should not be doled out unless the Incumbent demonstrates that it has exhausted local resources and local cooperative efforts.

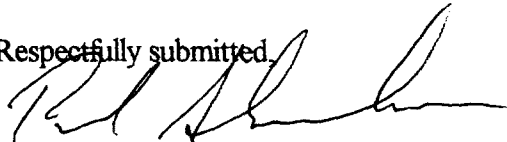
Therefore, in response to the Commission's request in paragraphs 33-36 and 92-97 of the notice and insofar as rural Nebraska is concerned, there is currently no competition in the local exchange market, certification as a telecommunications service provider is not a viable alternative in this market, and, in order to knock loose the grips of monopoly, extensive, mandated unbundling and access to the unbundled packages by "pure ISP's" is necessary. The

Court's concerns are very justified in rural areas.

With regard to paragraphs 101-108, such reports should continue to be mandated and published on a web page which is accessible by ISP's. As a practical matter, the Commission's Notice in this matter was the first indication of the existence of such reports that many ISP's had. Such information would be extremely beneficial in making investment decisions. To a certain extent, the communication business in rural areas is a bit of a secret society, the walls of which are extremely difficult to penetrate. They will likely be penetrated here only if up starts are able to survive long enough to learn the terrain. With specific reference to item 107, such reports should be expanded to require the BOC's to report the number of billing disputes and the time that it takes to respond to them. The local BOC is entirely unresponsive in regard to billing inquiries and there is some evidence that billing disputes are being generated simply to bate ISP's into non or partial payment which in turn causes huge balances to accumulate, and ultimately can cause insurmountable liquidity problems for the ISP once the BOC finally decides to spring the trap.

The nature of some the tentative positions articulated in the Notice seems out of step with the reality and the presence of monopolistic dominance in rural areas. Powerful forces will need to be brought to bear in these areas if the communications ice jam is to be broken and the various players and pieces freed to float in the open market. We would strongly encourage the Commission to use its authority in this and associated Rule making to assist in the process of innovation and investment in rural areas. No magic has happened here and things remain about as they have been. Without a feel for these concerns in Washington and a regulatory response consistent with them, it is likely rural areas will do without until their existing phone companies get around to paying them attention. The spirit of the 1996 Act will not prevail in rural Nebraska unless the Commission puts some serious life into it. This is for this reason that we respectfully submit this response.

Respectfully submitted,



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